

## 37 Am. Jur. 2d Fraud and Deceit § 187

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### Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

### IV. False Representations

### G. Representations and Statements as to Particular Matters

### 4. Credit, Solvency, and Financial Standing

## § 187. Representations as to third person's financial status

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### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  27, 28

### A.L.R. Library

[Misrepresentations as to financial condition or credit of third person as actionable by one extending credit in reliance thereon, 32 A.L.R.2d 184](#)

### Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 46](#) (Complaint, petition, or declaration—For damages—Conspiracy by bank and automobile dealer to misrepresent automobile dealer's true financial condition to finance company)

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit §§ 126 to 128](#) (Complaint, petition, or declaration—For damages—Misrepresentations as to solvency of third person—Inducing sale of goods to third person)

It is well settled that where the other requisite elements of actionable fraud are present, false and fraudulent representations made to one contemplating business transactions or negotiations with a third person, concerning the financial status, solvency, or credit of such third person, constitute misrepresentations which may form the basis for actionable fraud.<sup>1</sup> Recovery may

be had for misrepresentation as to a third party's financial condition where a person for the purpose of inducing another to lend money to said third party misrepresents the financial responsibility or solvency of such third person.<sup>2</sup> Further, when one undertakes to answer a financial inquiry regarding a third party and there is no fiduciary or contractual relationship between the party inquiring and the party being inquired of, the party being inquired of is under a duty to answer truthfully.<sup>3</sup> Generally, where a bank has given an honest opinion as to the financial worth and standing of a third person and as to whether the third person is entitled to credit, based on information known to the bank, the mere fact that the bank was mistaken in its opinion will not make it liable for fraud and deceit.<sup>4</sup>

Benefit to the representor is entirely immaterial as far as the representor's responsibility is concerned.<sup>5</sup> In order to constitute the basis of a charge of fraud in any case, however, the statements must be reasonably certain and definite<sup>6</sup> although under certain circumstances they may be implied.<sup>7</sup> They must be more than mere expressions of opinion<sup>8</sup> or statements as to something to eventuate in the future,<sup>9</sup> and according to the language of many of the authorities, they must be false and fraudulent in that they were made with intent to deceive or so recklessly as to constitute the equivalent of wrongful knowledge.<sup>10</sup> Statements as to the credit and financial standing of third persons are often largely matters of opinion<sup>11</sup> and are so understood,<sup>12</sup> and when such is the case, they are not actionable<sup>13</sup> provided that they are honestly given.<sup>14</sup>

False representations regarding the financial condition of a third person made after credit has been extended to the person are not actionable, at least where it is not shown that subsequently to the making of the false representations, the representee acted to the representee's detriment, refrained from asserting some right, or changed the representee's position by reason of such representations.<sup>15</sup>

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#### Footnotes

- 1 [Isaigi v. Brown](#), 58 U.S. 183, 17 How. 183, 15 L. Ed. 208, 1854 WL 7486 (1854); [Lehigh Valley Trust Co. v. Central Nat. Bank of Jacksonville](#), 409 F.2d 989 (5th Cir. 1969); [Forbes v. Auerbach](#), 56 So. 2d 895, 32 A.L.R.2d 176 (Fla. 1952); [Nailor v. Western Mortg. Co.](#), 54 Wash. 2d 151, 338 P.2d 737, 72 A.L.R.2d 938 (1959); [First Nat. Bank in Oshkosh v. Scieszinski](#), 25 Wis. 2d 569, 131 N.W.2d 308 (1964).  
As to the liability of a mercantile credit reporting agency for negligence, or negligence amounting to fraud, see [Am. Jur. 2d, Collection and Credit Agencies](#) §§ 39, 40.
- 2 [Community Bank, Lake Oswego, Oregon v. Bank of Hallandale & Trust Co.](#), 482 F.2d 1124 (5th Cir. 1973).
- 3 [Metal Trading Services of Colorado, Inc. v. Trans-World Services, Inc.](#), 781 F. Supp. 1539 (D. Kan. 1991) (applying Kansas law).
- 4 [Circle 76 Fertilizer, Inc. v. Nelsen](#), 219 Neb. 661, 365 N.W.2d 460, 41 U.C.C. Rep. Serv. 1079 (1985).
- 5 § 33.
- 6 [Pain v. Kiel](#), 288 F. 527 (C.C.A. 8th Cir. 1923); [Lillian Knitting Mills Co. v. Earle](#), 237 N.C. 97, 74 S.E.2d 351 (1953).  
A general statement or report stating conclusions as to the financial standing of a third person which is made the basis of credit to that person is not generally actionable. [Yates Center Nat. Bank v. Allen](#), 92 Kan. 481, 141 P. 553 (1914).
- 7 [Eastern Trust & Banking Co. v. Cunningham](#), 103 Me. 455, 70 A. 17 (1908).
- 8 [Lord v. Goddard](#), 54 U.S. 198, 13 How. 198, 14 L. Ed. 111, 1851 WL 6691 (1851); [Yates Center Nat. Bank v. Allen](#), 92 Kan. 481, 141 P. 553 (1914).
- 9 [Taylor v. Commercial Bank](#), 174 N.Y. 181, 66 N.E. 726 (1903).
- 10 § 127.
- 11 [Murray v. Lamb](#), 174 Or. 239, 148 P.2d 797 (1944).
- 12 [Russell v. Clark's Ex'rs](#), 11 U.S. 69, 3 L. Ed. 271, 1812 WL 1519 (1812).

- 13                    Gleason v. Thaw, 234 F. 570 (C.C.A. 2d Cir. 1916); Yates Center Nat. Bank v. Allen, 92 Kan. 481, 141 P. 553 (1914); Simons v. Cissna, 52 Wash. 115, 100 P. 200 (1909).
- 14                    § 127.
- 15                    Todd v. Wichita Federal Sav. and Loan Ass'n, 184 Kan. 492, 337 P.2d 648 (1959).

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